UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/849,621	05/05/2001	Phil Delurgio	DT:0102	1510

23669 7590 10/13/2005	EXAMINER
HUFFMAN LAW GROUP, P.C. 1832 N. CASCADE AVE. COLORADO SPRINGS, CO 80907-7449	MEINECKE DIAZ, SUSANNA M

ART UNIT	PAPER NUMBER
3623	

DATE MAILED: 10/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 10/03)

	Application No.	Applicant(s)
Office Action Summary	09/849,621	DELURGIO ET.AL.
	Examiner	Art Unit	
	Susanna M. Diaz	3623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>05 May 2001</u>.

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-35* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-35* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☒ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>7/27/05</u>.

4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.

5) ☐ Notice of Informal Patent Application (PTO-152)

6) ☐ Other: _____.

DETAILED ACTION

The previous examiner of record (Examiner Bylciw) is no longer with the Patent

Office. Examiner Susanna M. Diaz has taken over the examination of the instant

application. The current examiner has reviewed Applicant's comments and agrees that

there appears to have been a mix-up in the Office actions. The examiner apologizes for

this inconvenience and has located what she believes to be the proper Office action for

the instant application, authored by previous Examiner Bylciw. The originally intended

Office action is found herein:

1.   This non-final office action is in response to the application filed in the United

States on May 5, 2001. Claims 1 through 35 are pending in this application.

Information Disclosure Statement

The information disclosure statement filed September 2, 2003 fails to comply with

the provisions of 37 CFR 1.97, 1.98 and MPEP § 609 because a document (U.S. Patent

6,025,686 – Fernandez et al – 5/18/2000.) could not be found (although the following

U.S. Patent does exist: 6,052,686 - Fernandez et al – 4/18/2000). It (6,025,686) has

been placed in the application file, but the information referred to therein has not been

considered as to the merits. Applicant is advised that the date of any re-submission of

any item of information contained in this information disclosure statement or the

submission of any missing element(s) will be the date of submission for purposes of

determining compliance with the requirements based on the time of filing the statement,

including all certification requirements for statements under 37 CFR 1.97(e). See

MPEP § 609 ¶ C(1).

Drawings

2.   New corrected drawings (Figures 6 - 22) in compliance with 37 CFR 1.121(d) are

required in this application because they are difficult to read. Applicant is advised to

employ the services of a competent patent draftsperson outside the Office, as the U.S.

Patent and Trademark Office no longer prepares new drawings. The corrected drawings

are required in reply to the Office action to avoid abandonment of the application. The

requirement for corrected drawings will not be held in abeyance.

In addition, the title of Figure 4 has the word "Scenario" misspelled. The full title

after the correction should be "Scenario/ Results Processor Details." Appropriate

correction is required.

Specification

3.   Applicant is reminded of the proper language and format for an abstract of the
disclosure.

The abstract should be in narrative form and generally limited to a single
paragraph on a separate sheet within the range of 50 to 150 words. It is important that
the abstract not exceed 150 words in length since the space provided for the abstract
on the computer tape used by the printer is limited. The form and legal phraseology
often used in patent claims, such as "means" and "said," should be avoided. The
abstract should describe the disclosure sufficiently to assist readers in deciding whether
there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information
given in the title. It should avoid using phrases which can be implied, such as, "The

disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

The abstract for the disclosure is objected to because it is more than 150 words.

Appropriate correction is required. See MPEP § 608.01 (b).

4.   The disclosure is objected to because of the following informalities:

a) The application "Apparatus For Merchandise Price Optimization" has serial

number is 09/849,168. This serial number is missing in the specification on page 1 (line

17).

b) The application "System For Creating Optimized Promotion Event Calendar"

has serial number 09/849,783. This serial number is missing in the specification on

page 22 (line 21), page 23 (line 12), and page 24 (line 17).

c) The title of Figure 4 has the word "Scenario" misspelled. The full title after the

correction should be "Scenario/ Results Processor Details."

Appropriate correction is required.

5.   The use of the trademarks (page 19, lines 12 and 15; page 20, lines 21 and 23;

page 26, lines 20 and 23; page 28, line 1; page 53, claim 27, line 3; page 56, claim 35,

line 2) has been noted in this application. They should be capitalized wherever they

appear and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the

proprietary nature of the marks should be respected and every effort made to prevent

their use in any manner which might adversely affect their validity as trademarks.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly
claiming the subject matter which the applicant regards as his invention.

6.   **Claims 10, 27 and 35 are rejected under 35 U.S.C. 112, second paragraph,
as being indefinite for failing to particularly point out and distinctly claim the
subject matter which applicant regards as the invention.**

Regarding claims 10, 27 and 35, they contain the trademark/trade name JAVA™.
Where a trademark or trade name is used in a claim as a limitation to identify or
describe a particular material or product, the claim does not comply with the
requirements of 35 U.S.C. 112, second paragraph. See *Ex parte Simpson*, 218
USPQ 1020 (Bd. App. 1982). The claim scope is uncertain since the trademark or trade
name cannot be used properly to identify any particular material or product. A
trademark or trade name is used to identify a source of goods, and not the goods
themselves. Thus, a trademark or trade name does not identify or describe the goods
associated with the trademark or trade name. In the present case, the trademark/trade
name is used to identify/describe applets and, accordingly, the identification/description
is indefinite.

In order to overcome this rejection it is respectfully suggested that the claims be
amended to remove the trademark (JAVA™) and leave an appropriate generic name
(example: applets). Appropriate correction is required.

Double Patenting

7.   The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

        A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

        Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-35 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-30 of co-pending application 09/849,448 and claims 1-39 of co-pending application 09/849,168. This is a provisional double patenting rejection since the conflicting claims have not been patented.

8.   Claims 1-4 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 2 of Delurgio - U.S. Patent 6,553,352 (Delurgio '352). Although the conflicting claims are not identical, they are not patentably distinct from each other (MPEP § 802.01).

The essential differences between the application and patent are:

*   whether the merchandizing optimization apparatus determines the optimal

    price or promotion plan; and

- whether the apparatus communicates via the Internet.

It is well known to one of ordinary skill in the art that a merchandizing optimization apparatus that evaluates promotion scenarios to maximize profit based on estimated demand for product(s) also determines an optimal price consistent with that plan because of the price sensitivity of demand. It is also well known to one of ordinary skill in the art that a merchandizing optimization apparatus to determine the optimal pricing to maximize profit based on activity based costs (demand chain costs) is also a merchandizing optimization tool to determine optimal promotion plans because promotion plans can be evaluated, particularly those based on price reductions (discounts) and supplier offers that reduce demand chain costs (activity based costs). The merchandizing optimization apparatuses disclosed by the applicant and Delurgio '352 consider supplier offers as part of their demand chain cost calculations because per the applicant's own admission demand chain (activity based) costs include the costs incurred by retailers as they receive (acquire) products from suppliers (see applicant's paragraph 54 and Delurgio '352 column 8, lines 40-44). Accordingly, it would be obvious to one of ordinary skill in the art that the merchandizing optimization tool to determine optimal promotion plans can be considered a merchandizing optimization tool to determine optimal pricing (or vice-versa).

The applicant's apparatus architecture is essentially equivalent to the architecture of the apparatus shown in Delurgio '352 (Applicant Figures 2-5 and Delurgio '352 Figures 2-5). The optimization engine architecture in Delurgio '352 also includes a "promotion tool" (Delurgio '352, Figure 3).

It is also well known to one of ordinary skill in the art that pricing/ promotional plan systems (controllers, software, programs) can interact with users without exchanging data over the Internet. It would be obvious to a person of ordinary skill in the art to modify the apparatus described in claim 2 of Delurgio '352 so that the apparatus could be used on a computer with or without access to the Internet.

Claim 5 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 3 of Delurgio '352. Although the conflicting claims are not identical, they are not patentably distinct from each other (MPEP § 802.01) according to the reasoning applied above for claims 1-4.

Claim 6 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 4 of Delurgio '352. Although the conflicting claims are not identical, they are not patentably distinct from each other (MPEP § 802.01) according to the reasoning applied above for claims 1-4.

Claim 7 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 5 of Delurgio '352. Although the conflicting claims are not identical, they are not patentably distinct from each other (MPEP § 802.01) according to the reasoning applied above for claims 1-4.

Claim 8 is rejected under the judicially created doctrine of obviousness-type

double patenting as being unpatentable over claim 6 of Delurgio '352. Although the

conflicting claims are not identical, they are not patentably distinct from each other

(MPEP § 802.01) according to the reasoning applied above for claim 7.

Claim 9 is rejected under the judicially created doctrine of obviousness-type

double patenting as being unpatentable over claim 7 of Delurgio '352. Although the

conflicting claims are not identical, they are not patentably distinct from each other

(MPEP § 802.01) according to the reasoning applied above for claim 7.

Claim 10 is rejected under the judicially created doctrine of obviousness-type

double patenting as being unpatentable over claim 8 of Delurgio '352. Although the

conflicting claims are not identical, they are not patentably distinct from each other

(MPEP § 802.01) according to the reasoning applied above for claim 7.

Claims 11-14 are rejected under the judicially created doctrine of obviousness-

type double patenting as being unpatentable over claim 12 of Delurgio '352. Although

the conflicting claims are not identical, they are not patentably distinct from each other

(MPEP § 802.01) according to the reasoning applied above for claim 7.

Claim 15 is rejected under the judicially created doctrine of obviousness-type

double patenting as being unpatentable over claim 16 of Delurgio '352. Although the

conflicting claims are not identical, they are not patentably distinct from each other

(MPEP § 802.01) according to the reasoning applied above for claim 12.

Claims 16-17 are rejected under the judicially created doctrine of obviousness-

type double patenting as being unpatentable over claim 9 of Delurgio '352. Although

the conflicting claims are not identical, they are not patentably distinct from each other

(MPEP § 802.01) according to the reasoning applied above for claim 7.

Claim 18 is rejected under the judicially created doctrine of obviousness-type

double patenting as being unpatentable over claim 11 of Delurgio '352. Although the

conflicting claims are not identical, they are not patentably distinct from each other

(MPEP § 802.01) according to the reasoning applied above for claim 17.

Claim 19 is rejected under the judicially created doctrine of obviousness-type

double patenting as being unpatentable over claim 20 of Delurgio '352. Although the

conflicting claims are not identical, they are not patentably distinct from each other

(MPEP § 802.01). The essential differences between the patent and application are:

- whether the merchandizing optimization apparatus determines the optimal

  price or promotion plan (see reasoning above for applicant claim 1); and

- the optimization calculation method.

The applicant models the relationship between potential prices and market demand, estimates demand chain costs based on market demand, and then uses market demand and demand chain costs in the optimization whereas the patent describes the optimal scenario is determined using modeled market demand and calculated demand chain costs. It is well known in the art that computer/server-based computer programs (demand engines, controllers) to model relationships between prices and demand. It is also well known in the art that computer/server-based computer programs (activity based cost engines, controllers) to estimate/ calculate demand chain costs for products based on market demand. It would be obvious to one of ordinary skill in the art at the time of invention to modify the interface as part of an optimization server that included the means (demand engine and activity based cost engine) used by the applicant to perform calculations that are expressly desired by the interface because of efficiency.

Claim 20 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 29 of Delurgio '352. Although the conflicting claims are not identical, they are not patentably distinct from each other (MPEP § 802.01) according to the reasoning applied above for claim 19.

Claim 21 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 32 of Delurgio '352. Although the

conflicting claims are not identical, they are not patentably distinct from each other

(MPEP § 802.01) according to the reasoning applied above for claim 20.

Claim 22 is rejected under the judicially created doctrine of obviousness-type

double patenting as being unpatentable over claim 33 of Delurgio '352. Although the

conflicting claims are not identical, they are not patentably distinct from each other

(MPEP § 802.01) according to the reasoning applied above for claim 21.

Claim 23 is rejected under the judicially created doctrine of obviousness-type

double patenting as being unpatentable over claim 30 of Delurgio '352. Although the

conflicting claims are not identical, they are not patentably distinct from each other

(MPEP § 802.01) according to the reasoning applied above for claim 20.

Claim 24 is rejected under the judicially created doctrine of obviousness-type

double patenting as being unpatentable over claim 31 of Delurgio '352. Although the

conflicting claims are not identical, they are not patentably distinct from each other

(MPEP § 802.01) according to the reasoning applied above for claim 20.

Claim 25 is rejected under the judicially created doctrine of obviousness-type

double patenting as being unpatentable over claim 21 of Delurgio '352. Although the

conflicting claims are not identical, they are not patentably distinct from each other

(MPEP § 802.01) according to the reasoning applied above for claim 19.

Claim 26 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 22 of Delurgio '352. Although the conflicting claims are not identical, they are not patentably distinct from each other (MPEP § 802.01) according to the reasoning applied above for claim 19.

Claim 27 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 23 of Delurgio '352. Although the conflicting claims are not identical, they are not patentably distinct from each other (MPEP § 802.01) according to the reasoning applied above for claim 19.

Claims 28-30 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 20, 27-29 of Delurgio '352. Although the conflicting claims are not identical, they are not patentably distinct from each other (MPEP § 802.01). The essential differences between the patent and application are:

- whether the merchandizing optimization apparatus determines the optimal price or promotion plan (see reasoning above for applicant claim 19).
- a template (form, organized data fields) for prescribing supplier offers and forward buys.
- a template (form, organized data fields) for prescribing store merchandizing capacities.

It is obvious to one of ordinary skill in the art that as both the application and patent describe merchandizing optimization systems that calculate activity based costs that there must be a template (form, organized data fields) to enable the users of the system to convey supplier offer information (updates, changes) to the activity based costing (demand chain costing) calculation engine.

It is obvious to one of ordinary skill in the art that the amount of inventory on-hand by a retailer is a significant factor in determining the profitability of a promotion plan/ price plan. Accordingly, it would be obvious to one of ordinary skill in the art to include a template (form, organized data fields) to enable the users of the system to specify the timing, quantities, and price of supplier shipments (supplier offers and forward buys) to the retailer from suppliers during the period of analysis.

It is obvious to one of ordinary skill in the art that not all store locations can accommodate every promotional scenario (for example a large swing in units sold as the inventory required for some products might not be accommodated for each store) and that rules and constraints are used to keep optimization solutions within pragmatic ranges. It is obvious to one of ordinary skill in the art that users of the systems described in the application and patent would have the ability to constrain the optimization so that the stores selected for the optimization scenario could accommodate the recommended solution.

Claim 31 is rejected under the judicially created doctrine of obviousness-type

double patenting as being unpatentable over claim 26 of Delurgio '352. Although the

conflicting claims are not identical, they are not patentably distinct from each other

(MPEP § 802.01) according to the reasoning applied above for claim 19.

Claim 32 is rejected under the judicially created doctrine of obviousness-type

double patenting as being unpatentable over claims 25 of Delurgio '352. Although the

conflicting claims are not identical, they are not patentably distinct from each other

(MPEP § 802.01). The essential differences between the patent and application are:

- whether the merchandizing optimization apparatus determines the optimal

  price or promotion plan (see reasoning above for applicant claim 19);

- Store (archive) product attribute and sales history data for a plurality of stores

  (retail locations) within a centralized database for relevant products.

- Employ a web server to allow suppliers to prescribe supplier offers.

- Employ a web server to provide user with a plurality of scenario/ result web

  pages enabling a user to prescribe the promotion events and constraints for

  generating the optimum promotion plan.

- Access scenario/ result web pages by user computers with a thin web client.

It is well known to one of ordinary skill in the art that computer programs and

associated databases could be stored on a centralized web server and accessed by

users operating thin web clients (for example: MICROSOFT® Internet Explorer

browsers on personal computers) remotely via an Internet network involving Internet

web pages for communication. It is also well known to one of ordinary skill in the art

that a database could be created that contains the product attribute and sales history for

particular stores and groups of stores. Accordingly, it is well known to a person of

ordinary skill in the art that product attribute and sales information could be stored within

a centralized database along with the merchandizing optimization system and could be

accessed by retailers and suppliers via web pages (templates, organized data fields) to

prescribe supplier offers, promotion events, and constraints for generating the optimal

promotion plan.

Claim 33 is rejected under the judicially created doctrine of obviousness-type

double patenting as being unpatentable over claim 32 of Delurgio '352. Although the

conflicting claims are not identical, they are not patentably distinct from each other

(MPEP § 802.01) according to the reasoning applied above for claim 32.

Claim 34 is rejected under the judicially created doctrine of obviousness-type

double patenting as being unpatentable over claim 21 of Delurgio '352. Although the

conflicting claims are not identical, they are not patentably distinct from each other

(MPEP § 802.01) according to the reasoning applied above for claims 32-33.

Claim 35 is rejected under the judicially created doctrine of obviousness-type

double patenting as being unpatentable over claim 23 of Delurgio '352. Although the

conflicting claims are not identical, they are not patentably distinct from each other

(MPEP § 802.01) according to the reasoning applied above for claims 32-33.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

9.   **Claims 1-13, 16, and 19-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ouimet (U.S. Patent 6,094,641) in view of Morgan (U.S. Patent 5,799,286).**

Regarding claims 1, 13, 19 and 28, Ouimet teaches a computerized

merchandizing optimization system (apparatus, device, interface, computer-

implemented method, or financial decision tool) to determine the optimum prices/

demand/ promotion for product(s) for sale. The merchandizing optimization system

comprises:

- a program (scenario/ result processor, apparatus, device) to enable the user

  to prescribe an optimization scenario and be presented with the determined

  optimum promotion plan (column 3, line 44 through Column 4, line 23).

- a program (demand engine, controller) configured to model the relationships

  between prices and market demand/ sales (column 4, lines 35-44).

- • a program (optimization engine, module, optimization server, controller) to use said demand engine and cost calculations to determine optimal promotion plan (column 3, lines 30-33 and column 4, lines 16-19). The system calculates the optimum prices/ promotions for a standard of merit, in this case profit (column 6, lines 2-5).

- • Considers a cost calculation when optimizing promotion and pricing for profit (column 6 lines 2-5).

Ouimet does not teach the method of calculating costs via an activity-based costing methodology.

Morgan discloses an automated activity-based management system (engine, module, program, controller) designed to:

- • Calculate product costs (column 20, lines 24-35)

- • Specify (enable, input) product information/ supplier offers (for example, changes/ updates in the cost per unit to purchase product from suppliers) via a template (graphical user interface, organized entry fields) (column 3 line 64 through column 4 line 3, and column 6 lines 43-45).

Ouimet and Morgan are in the analogous art of providing financial decision tools to businesses to improve their profitability. It would have been obvious to a person of ordinary skill in the art at the time of invention to combine the teachings of Ouimet and

Morgan to determine the optimal promotion plans to achieve profitability using more

thorough costing methodology for the advantages of accuracy.

Regarding claims 2, 7, 11-12, 16, and 20, Ouimet teaches a merchandizing

optimization system that includes:

- a program (input/ output processor, scenario controller, apparatus, device) to

   acquire data relating to the optimization scenario from the user and then later

   distributes the results to the user in a format consistent with the optimization

   determination/ results (column 3, lines 3-9 and column 4, lines 21-23).

- a program (template controller, apparatus, device) to allow for prescription of

   optimization scenario and distribution of results (column 3 line 63 to column 4

   line 2, column 4 lines 30-33, lines 39-42). In addition, it is obvious and well

   known in the art of computer-based optimization systems that the scenario

   definition and results information would have to be in templates (forms,

   organized data fields) suitable to be understood by a computer and

   configured to enable said user to prescribe and receive scenario parameters.

- A program (command interpreter, apparatus, device) to extract user

   commands from the first templates (forms, organized data fields) and

   configured to populate the result templates (forms, organized data fields)

   (column 3, lines 48-51, lines 58-60, lines 63-66).

Regarding claims 3-4 and 21-22, Ouimet teaches a merchandizing optimization

system that receives instructions via the Internet (column 3, lines 34-41). Information

exchanged via the Internet inherently uses packet switched protocol and TCP/IP. The

Internet refers specifically to the DARPA Internet and the TCP/IP protocols it uses. The

Internet is a collection of packet-switching networks and routers that uses the TCP/IP

protocol suit and functions as a single, cooperative virtual network (Visit URL

http://www.wdvl.com/Internet/ for more information about the Internet).

Regarding claims 5 and 23, Ouimet teaches a merchandizing optimization

system where the user interactively provides and receives data to/ from the system

(Column 4, line 35-39).

Regarding claims 6 and 24, Ouimet teaches a merchandizing optimization

system where the input data is acquired from a source file and results data are

distributed to a destination file designated by the user (Column 3, lines 17-26, 30-33,

36-40).

Regarding claims 8-10 and 25-27, Ouimet teaches a merchandizing optimization

system that receives instructions via the Internet (Column 3, lines 34-41). Ouimet does

not teach that input/ output information via templates (forms, organized data fields) is

provided via hypertext markup language (HTML), extensible markup language (XML), or

JAVA™ applets. Official action is taken that it is well known in the art to create input/

output templates (forms, organized data fields) to exchange information over the

Internet. It would be obvious to one of ordinary skill in the art at the time of invention to

provide input/ output templates (forms, organized data fields) using HTML, XLM, or

JAVA™ applets to exchange information over the Internet between the user and the

merchandizing optimization system.

10.   Claims 14-15, 17-18, and 29-31 are rejected under 35 U.S.C. 103(a) as being

unpatentable over Ouimet in view of Morgan as applied to claims 1-13, 16, and 19-

28 and in further view of Little (1975).

Regarding claims 14-15, 17-18, and 29-31, Ouimet and Morgan teach a

merchandizing optimization system (apparatus, device, interface, computer-

implemented method) to determine the optimum prices/ demand/ promotion for

product(s) using an activity based costing model with a template (form, graphical user

interface, organized data filed for specifying allowable/ valid supplier offers.

Ouimet and Morgan do not expressly teach an optimization model/ system/

apparatus that has a template (graphical user interface, form, organized input fields)

that:

- Associates promotional events to products.

- Specifies a forward buy method.

- Specifies rules that constrain the optimization scenario.

- Specifies store merchandizing capacities.

- Specifies a promotion scenario and a time period for which the optimization

  scenario is to be determined.

Little teaches a merchandizing optimization system that has a template (form, organized input fields) to:

- Associate promotional events to products (p. 632, Figure 1 and p. 633, lines 2-5).

- Considers a forward buy method (p. 640, lines 17-19).

- Specifies rules that constrain the optimization scenario (p. 637 equation 6).

- Specifies store merchandizing capabilities (p. 649, lines 35-40).

- Specifies a promotion scenario and a time period for which the optimization scenario is to be determined (p. 643, lines 17-20).

It is old and well known to one of ordinary skill in the art that result data could be displayed in templates (forms, organized data fields) and be comprised of desired promotion plans and supplier offers. It also is old and well known to one of ordinary skill in the art that the optimization results between a plurality of profit scenarios could be displayed as a multiple-bar histogram on a computer monitor.

Ouimet, Morgan, and Little are in the analogous art of providing financial planning tools. It would be obvious to one of ordinary skill in the art at the time of invention to combine the teachings of Ouimet, Morgan, and Little to create a merchandizing optimization system based on an accurate activity based costing that provides the user the ability to customize the optimization scenario for the advantage of convenience.

11.   Claims 32-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ouimet in view of Morgan as applied to claims 1-13, 16, and 19-28 and in further view of Tellis (1995).

Regarding claim 32, Ouimet and Morgan teach a merchandizing optimization system (apparatus, device, interface, computer-implemented method) to determine the optimal promotional plan for products, promotional events, and supplier offers (see reasons provided for claims 1, 13, 19 and 28).

Ouimet does not expressly teach a merchandizing optimization system to:

- Store (archive) product attribute and sales history data for a plurality of stores (retail locations) within a centralized database for relevant products.

- Employ a web server to allow suppliers to prescribe supplier offers.

- Employ a web server to provide user with a plurality of scenario/ result web pages enabling a user to prescribe the promotion events and constraints for generating the optimum promotion plan.

- Access scenario/ result web pages by user computers with a thin web client.

Tellis teaches a pricing system that includes discussion regarding:

- the ability to set-up (specify using a template) an optimization scenario for specific products that could be in product categories (p. 273, lines 22-24).

- the ability to set-up (specify using a template) an optimization scenario to select the store locations where the sales of the products used in the optimization will be sold (p. 277, lines 34-36).

- the ability to set-up (specify using a template) rules/ constraints that govern the determination of the optimum prices (p. 275 lines 28-29).

Ouimet teaches a merchandizing optimization system that receives instructions via the Internet (column 3, lines 34-41). Official action is taken that it is well known and old that computer programs and associated databases could be stored on a centralized web server and accessed by users operating thin web clients (for example: MICROSOFT® Internet Explorer browsers on personal computers) remotely via an Internet network involving Internet web pages for communication. It is also well known that a database could be created that contains the product attribute and sales history for particular stores and groups of stores.

It would be obvious to one of ordinary skill in the art at the time of invention to co-locate the optimization software program and sales history data on a centralized server that is accessible via the Internet to users and suppliers operating thin web clients to communicate to and from a merchandizing optimization system. The said communication could be via web pages (templates, organized data fields) to prescribe supplier offers, promotion events, and constraints for generating the optimal promotion plan.

Oiumet, Morgan, and Tellis are in the analogous art of providing financial

planning tools to businesses to improve their profitability. It would have been obvious to

a person of ordinary skill in the art at the time of invention to combine the teachings of

Ouimet, Morgan, and Tellis to determine the optimal price/ promotion plan to achieve

profitability using more thorough costing methodology for the advantages of accuracy.

Regarding claim 33, Ouimet teaches a merchandizing optimization system that

receives instructions via the Internet (column 3, lines 34-41). Information exchanged via

the Internet inherently uses packet switched protocol and TCP/IP. The Internet refers

specifically to the DARPA Internet and the TCP/IP protocols it uses. The Internet is a

collection of packet-switching networks and routers that uses the TCP/IP protocol suit

and functions as a single, cooperative virtual network (Visit URL

http://www.wdvl.com/Internet/ for more information about the Internet).

Regarding claims 34-35, Ouimet teaches a merchandizing optimization system

that receives instructions via the Internet (Column 3, lines 34-41). Ouimet does not

teach that input/ output information via templates (forms, organized data fields) is

provided via hypertext markup language (HTML), extensible markup language (XML), or

JAVA™ applets. Official action is taken that it is well known in the art to create input/

output templates (forms, organized data fields) to exchange information over the

Internet. It would be obvious to one of ordinary skill in the art at the time of invention to

provide input/ output templates (forms, organized data fields) using HTML, XLM, or

JAVA™ applets to exchange information over the Internet between the user and the

merchandizing optimization system.

Conclusion

The prior art made of record and not relied upon is considered pertinent to

applicant's disclosure.

a) Cunningham (U.S. Patent 6,029,139) teaches a system and method of

evaluating and optimizing promotional plans for products, segments of products, or

categories of products.

b) Montgomery, A. "Creating Micro-Marketing Pricing Strategies Using

Supermarket Scanner Data" teaches how prices can be profitably customized at the

store-level.

c) Abraham, M.M. "Promoter: An Automated Promotion Evaluation System,"

teaches a system and methodology for evaluating manufacturers' trade promotions

which may be combined with consumer promotions.

d) Cerf, V.G. and R.E. Kahn, "A Protocol for Packet Network Interconnection,"

IEEE Transactions on Communications COM-22, May 1974, (pages 637-648) teaches

the exchange of data over an Internet or network using a packet-switched protocol such

as TCP/IP.

e) Berners-Lee, T. "Hypertext Markup Language 2.0 Working Paper," November

1995, (http://ftp.ics.uci.edu/pub/ietf/html/rfc1866.txt) teaches the method of creating

templates for data input and/or output in hypertext markup language, commonly known as HTML.

f) Bosak, J and World Wide Web Consortium. "Extensible Markup Language (XML)," December 1997, (http://www.w3.org/TR/PR-xml-971208.html) teaches the method of providing templates for data input and/or output using extensible markup language – XML.

g) Flanagan, D. "JavaScript: The Definitive Guide, 3rd Edition," published by O'Reilly in June 1998 with an ISBN of 1-56592-392-8, section 14.8) teaches the method or computer-based program that provides templates for data input and/or output using JAVA™ applets (see

h) Auerbach, A.A. - US Patent 3,017,610 - June 1962, (column 1, paragraph 1) teaches a method or computer-based apparatus that provides input data to a computer program via an electronic source file and distributes the optimization results from a computer program via a destination electronic file.

i) Abraham, M. "An Implemented System For Improving Promotion Productivity using Store Scanner Data," Marketing Science Vol. 12, No. 3, Summer 1993, pages 259, Table A) teaches sales changes from a baseline in terms of a percentage.

k) Buzzell, R.D. "The Costly Bargain of Trade Promotion," Harvard Business Review, March-April 1990 (p. 141-149) teaches the concept of forward buys.

SB – June 13, 2005

Again, please note that this is a reprint of the intended Office action from previous Examiner Bylciw. The new examiner of record is Examiner Susanna M. Diaz, whose contact information is found below:

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susanna M. Diaz whose telephone number is (571) 272-6733. The examiner can normally be reached on Monday-Friday, 10 am - 6 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz can be reached on (571) 272-6729. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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